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No. 582.

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE PEOPLE OF PUERTO RICO, PETITIONER

v.

RUBERT HERMANOS, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MORANDUM OF THE UNITED STATES, AS AMICUS CURIAE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the circuit court of appeals (R. 315–329) and the dissenting opinion of Judge Peters (R. 330–332) are reported in 106 F. 2d 754. The opinion of the Supreme Court of Puerto Rico (R. 285–304) is reported in 53 P. R. 779, Spanish edition. The English edition has not yet appeared.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered on September 27, 1939 (R. 333). The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether Acts Nos. 33 and 47, Laws of Puerto Rico, Special Session, 1935, pp. 418, 530–536, are invalid, the former *in toto* and the latter in part, as attempting to amend or enforce Section 3 of the Joint Resolution of May 1, 1900, 31 Stat. 715, 716; 48 U. S. C., Sec. 752.

2. Whether the complaint in this case is sufficiently definite.

STATUTES INVOLVED

The pertinent portions of the applicable statutes are set out in full in the Appendix to the petition. They may be summarized as follows:

Joint Resolution No. 23, approved May 1, 1900, 31 Stat. 715, in effect amended the former Organic Act of Puerto Rico, the Foraker Act of April 12, 1900, c. 191, 31 Stat. 77. Section 3 of the Joint Resolution, now 48 U. S. C., Sec. 752, provides that "every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land." This provision was specifically continued in effect by Section 39 of the present Organic Act of Puerto Rico, the Jones Act of March 2, 1917, c. 145, 39 Stat. 951, 964.

The Puerto Rico private corporation law, Article I, Section 3, paragraph 4 (Code of Commerce (1932), p. 327), provides "That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the

United States, of May first, nineteen hundred." This provision was first enacted in this form in Act No. 30, approved March 9, 1911, Pars. 407 *et seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89–90.

The "Act Establishing *Quo Warranto* Proceedings", approved March 1, 1902 (Rev. Stats. and Codes of Porto Rico, 1902, Pars. 779–787, pp. 282–284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319–1327, pp. 268–269), provides that if any corporation does or omits any act which amounts to a forfeiture of its corporate rights, or exercises rights not conferred by law, the Attorney General may proceed against the corporation by *quo warranto* in the appropriate district court.

Act No. 33, approved July 22, 1935 (Laws of Puerto Rico, Special Session, 1935, p. 418) provides:

> SECTION 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

Act No. 47, approved August 7, 1935 (Laws of Puerto Rico, Special Session, 1935, pp. 530–532), provides:

> SECTION 2. In case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General * * * may file before any district court of Puerto Rico

> a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, * * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General * * * may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *

The portion of this section preceding the first semicolon was derived from Rev. Stats. and Codes of Porto Rico (1902), Par. 780, p. 282. The succeeding portion was new.

STATEMENT

This action was initiated in the Supreme Court of Puerto Rico by a motion by the Attorney General of Puerto Rico for leave to file a complaint of *quo warranto* against the respondent (R. 1). Leave to file the complaint was granted (R. 35).

The amended complaint alleges (R. 44–47) that respondent was organized under the laws of Puerto Rico in 1927, that its articles of incorporation (set out at R. 5–14) provide "that the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to five hundred acres only, and subject to the restriction set up in Section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the

United States of America" (R. 8); that notwithstanding this restriction and in violation of the Joint Resolution respondent owns and controls some 12,188 acres of farming land; that this holding and control is contrary to the public policy of Puerto Rico as first enunciated by the Joint Resolution of May 1, 1900, and since reiterated by Acts Nos. 33 and 47 of the Second Special Session of the Puerto Rican legislature of 1935. The complaint prays the court to adjudge respondent to have forfeited its franchise, to order its dissolution, and to impose on it the proper fine (R. 47).

The respondent filed demurrers (R. 51–59) in which it contended, among other things, that the court was without jurisdiction because the proceeding was brought with the object of charging respondents with a violation of a law of the United States, that is, the Joint Resolution of May 1, 1900, and that jurisdiction, if any, of violations of that law was in the federal courts (R. 51); that Act No. 33 of July 22, 1935, and Act No. 47 of August 7, 1935, are void as attempts to amend the Joint Resolution by conferring jurisdiction upon the Supreme Court of Puerto Rico to punish violations thereof (R. 52–53); and that the complaint is ambiguous, unintelligible, and uncertain (R. 58). The Court overruled the demurrers for reasons stated in its opinion in a similar case decided at the same time (R. 81–82). In that opinion (R. 68–81) the Court upheld the validity of Acts No. 33 of July 22, 1935, and No. 47 of August 7, 1935.

The respondent then filed an answer admitting that it owns and controls the lands alleged in the complaint (R.

92), but setting up various defenses. At the trial petitioner introduced documentary evidence designed to show the necessity and justification for the 500 acre limitation (R. 130–284). Respondent introduced no evidence.

The Supreme Court of Puerto Rico entered judgment against respondent (R. 305–306). It found respondent guilty of violating the provisions of the Joint Resolution of May 1, 1900, and its own articles of incorporation by which it was restricted to the ownership and control of lands not in excess of 500 acres (R. 305). It ordered the forfeiture and cancellation of respondent's license and the dissolution and winding up of its affairs, and that respondent pay costs, including $2,000 as attorneys' fees, and a fine of $3,000 (R. 305).

The circuit court of appeals held that Acts Nos. 33 and 47 are invalid in that they amend and enlarge the scope of the Joint Resolution of May 1, 1900, and in that they confer jurisdiction upon the Supreme Court of Puerto Rico to impose penalties for violations of that Resolution; and that even if the provisions of Act No. 47 which authorize *quo warranto* for violation of Puerto Rican statutes are separable from the provision authorizing *quo warranto* for violation of the Resolution, that the complaint did not allege a violation of Puerto Rican law with sufficient definiteness to constitute a good charge.[1] Judge Peters, dissenting, agreed

[1] The court also said that Puerto Rico had condoned respondent's violations of the 500-acre restriction, and that it therefore should not be permitted to forfeit respondent's land. However, Puerto Rico had neither sought nor received a decree of forfeiture of respondent's land, and the judgment of the circuit court of

that Act No. 33 was invalid but thought that Act No. 47 could be interpreted as imposing only a penalty for violation of corporate restrictions imposed by the Puerto Rican legislature pursuant to the mandate of the Joint Resolution, and that in any event it had separable provisions penalizing violations of local law which were sufficient to support the judgment of the Supreme Court. Whether the complaint was sufficiently definite he thought to be a local question as to which the Puerto Rican court should not be reversed.

INTEREST OF THE UNITED STATES

This proceeding was brought to effectuate the policy, embodied in both federal and Puerto Rican legislation, that a corporation authorized to engage in agriculture shall not own or control more than 500 acres of land in Puerto Rico. It is as much to the interest of the United States that this prohibition be enforced by the insular authorities as that it be enforced by federal authorities; indeed, the peculiarly local nature of the problem with which the 500-acre restriction deals especially qualifies the insular authorities for its enforcement.

REASONS FOR GRANTING THE WRIT

I

The court below held that Acts Nos. 33 and 47, Laws of Puerto Rico, Special Session, 1935, are invalid, the former *in toto* and the latter in part, as attempting to amend or enforce the Joint Resolution of May 1, 1900. This holding is probably erroneous.

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appeals recited that it is "without prejudice to future proceedings under valid statutes" or in the federal courts based on a violation of the Joint Resolution (R. 333).

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Congress by the Joint Resolution of May 1, 1900, directed that every corporation thereafter authorized by the insular government to engage in agriculture should by its charter be restricted to the ownership and control of not to exceed 500 acres of land.

Puerto Rico provided, in its general corporation law (*supra*, p. 2), that the power of corporations organized thereunder to hold real estate should be subject to the restriction contained in the Joint Resolution, and respondent's articles of incorporation likewise so provide (R. 8). Act No. 33 of the Laws of Puerto Rico, Special Session, 1935, authorizes and confers jurisdiction on the Supreme Court of Puerto Rico of *quo warranto* proceedings "for violations of the provisions of Section 752, Title 48, United States Code," which restates the Joint Resolution of 1900. Act No. 47, Laws of Puerto Rico, Special Session, 1935, amended the *quo warranto* Act of 1902. The earlier Act provided that if "any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law," the Attorney General might proceed against it by *quo warranto* before the appropriate district court of Puerto Rico. Act No. 47 retains this provision, but in addition provides that whenever any corporation violates "the express provisions of the Organic Act of Puerto Rico, or any of its statutes," the Attorney General may proceed against it by *quo warranto* in the Supreme Court of Puerto Rico.

The vice of these two Acts, the court below held, is that they provide for the enforcement of the 500-acre restriction in the Joint Resolution of 1900 (embodied in

48 U. S. C., Sec. 752, and in the Organic Act of Puerto Rico) rather than solely for the enforcement of the restriction as contained in the Puerto Rico corporation law or in corporate charters. For this reason the circuit court held Act No. 33 invalid *in toto* and Act No. 47 invalid insofar as it provided for enforcement of the restriction in the Organic Act.

In *Puerto Rico* v. *The Shell Co.*, 302 U. S. 253, the Court held that the fact that the Sherman Antitrust Act was applicable to Puerto Rico did not preclude adoption by the legislature of Puerto Rico and enforcement in the local courts of a local antitrust act substantially similar to the Sherman Act. The Court was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Antitrust Act but only its local equivalent. See 302 U. S. at 271. It may be that Puerto Rico could not, therefore, proceed against the respondent for violation of the 500-acre restriction in the Joint Resolution if the Resolution were an ordinary prohibitory federal statute, although Puerto Rico could, even upon that assumption, proceed against the respondent for violating the 500-acre restriction in the Puerto Rican corporation law or in respondent's corporate charter. The court below assumed that the Joint Resolution was an ordinary federal statute, like the Sherman Act, and held that Acts Nos. 33 and 47 authorized proceedings for violation of the Joint Resolution rather than solely for violation of the local law or the charter. We believe that this holding is erroneous, but challenge first the more basic assumption as to the nature of the Joint Resolution.

1. A statute like the Sherman Act is not a mandate to or limitation upon the insular government, but runs directly against the individuals. A proceeding to enforce its prohibitions would, therefore, in the absence of duplicate insular legislation, necessarily be a proceeding solely to enforce a federal statute. The Joint Resolution does not operate at all in the same fashion as the Sherman Act, and, as the fact that this proceeding is in *quo warranto* emphasizes, a proceeding to enforce the 500-acre restriction of the Joint Resolution is in no sense a proceeding solely to enforce a federal statute, but is rather a proceeding to challenge the exercise of a power in excess of that conferred by local law.

The Joint Resolution is a part of the Organic Act of Puerto Rico. The Resolution is primarily a limitation upon the powers of the government of Puerto Rico. It prohibits that government from empowering any corporation to hold more than 500 acres of agricultural land in Puerto Rico. It is plain, therefore, that the respondent, by owning and controlling more than 500 acres of land in Puerto Rico, is exercising powers not conferred by local law. This is so because of the express provision contained in the insular statute and in respondent's charter. It is likewise, and independently so, because the federal statute prohibits the insular government from conferring upon a corporation such as the respondent power to own and control more than 500 acres of land. If the insular statute or the charter had attempted to confer a greater power, it would to that extent be invalid. Notwithstanding any such attempt to confer a greater power, the People of Puerto Rico would have standing to challenge in a

proceeding in *quo warranto* the exercise by the respondent of power which, as a result of the prohibition contained in the federal statute, is in excess of that conferred by local law.

Every grant of franchise by a body politic is subject to the condition that it may be forfeited or revoked by the granting authority if under the color of its authority the grantee exercises powers not conferred by local law. Consequently, there can be no doubt as to the power of The People of Puerto Rico, by a proceeding in *quo warranto* for the forfeiture of the respondent's franchise, to challenge the exercise of powers in excess of those conferred by local law. That is what Acts Nos. 33 and 47 authorize. While, literally, they provide for proceedings to challenge violations of the provisions of the Joint Resolution, they do not attempt to authorize direct enforcement of the Joint Resolution but only of the limitation on the powers of local corporations as a matter of local law which stems from the restriction in the Joint Resolution. That is necessarily so from the nature of a *quo warranto* proceeding, which is to challenge an exercise of power asserted to be in excess of that conferred upon the corporation by the complaining sovereign. Certainly it is a permissible interpretation of the Acts if necessary to save their validity.

2. Wholly aside from these considerations, and viewing the Joint Resolution not as limiting the power of the Puerto Rican government but as standing on the same footing as an ordinary federal statute running solely against individuals, it is submitted that Acts Nos. 33 and 47 should have been upheld. It is clear from the

decision in the *Shell* case, and is apparently acknowledged by the court below, that if Acts Nos. 33 and 47 had provided for the enforcement of the 500-acre restriction in the Puerto Rican corporation law or in the respondent's corporate charter the Acts would be valid. And it can reasonably make no difference that the Acts refer directly to the national source of the restriction instead of to its insular embodiments. The Joint Resolution contemplated that it would be made effective by the Puerto Rican government and technically defective drafting of the Puerto Rican Acts, if there be such, should not invalidate the Acts since the intention of the insular legislature and its power to carry out that intention are both clear.

Acts Nos. 33 and 47 can, if necessary to save their validity, easily be viewed as providing for the enforcement of local measures incorporating the 500-acre restriction rather than for direct enforcement of the Joint Resolution. Both Acts deal with violation of the "provisions" of the Joint Resolution, and can be regarded as referring to those provisions as adopted in the Puerto Rican corporation law and in corporate charters. Or, the two Acts can be considered to adopt and reenact by reference the restriction of the Joint Resolution, as well as to provide for enforcement.

II

Act No. 47 authorized *quo warranto* both for violation of the provisions of the Organic Act and for violation of any of the statutes of Puerto Rico. The court below held that, even if the provision as to the statutes of Puerto Rico were separable from the invalid provi-

sion as to the Organic Act, the complaint was too indefinite to allege a valid charge for violation of Puerto Rican statutes. This holding fails to give effect to the doctrine that decisions of the Supreme Court of Puerto Rico on questions of local law are not to be reversed unless patently erroneous. *Bonet* v. *The Texas Co. (P. R.), Inc.*, decided January 2, 1940, No. 132, this Term.

The amended complaint alleges that by respondent's articles of incorporation its right to hold and control land is restricted to 500 acres only, "in conformity with the restrictions established in section 3 of the Joint Resolution" of May 1, 1900 (R. 44). The complaint then alleges that the respondent has violated this restriction by owning and controlling some 12,188 acres (R. 45). The court below held that the complaint was insufficient under Act No. 47 because it did not specifically charge a violation of any Puerto Rican statute (R. 329). Since the complaint charged a violation of the 500-acre restriction in respondent's charter, and stated that it was inserted in conformity with the Joint Resolution, it made no substantial difference that the Puerto Rican corporation law under which the charter was issued was not named. Certainly the holding of the Puerto Rican court that the pleading was sufficient was not so palpably erroneous as to warrant reversal.[2]

[2] The Supreme Court of Puerto Rico did not discuss this question in its main opinion, but passed upon it in overruling respondent's demurrers (R. 81–82; and R. 71–72).

III

It is not wholly clear whether the court below also held that the complaint must be dismissed because it sought to forfeit land for past violations of statutes long unenforced. See footnote 1, *supra*, p. 6, and R. 328. If it did so hold the decision is clearly erroneous: (a) the complaint did not seek forfeiture of land (R. 47), and the Supreme Court of Puerto Rico did not decree it (R. 305); and (b) respondent's violations of the 500-acre restriction are not only past but continuing.

IV

This case is of substantial public importance. Congress and the Puerto Rican legislature adopted the 500-acre restriction upon the conclusion, concurred in by the Supreme Court of Puerto Rico in this case, "that the existence of large land-holdings in a small agricultural country, abnormally overpopulated and without basic industries other than those required for the preparation of agricultural products for the market, is contrary to the economic welfare of its people" (R. 294–295). Such land holdings are, the Puerto Rican court said, an element of "the most intricate problem confronting the people of the Island" (R. 294). In the forty years which have elapsed since the Joint Resolution the present proceeding and related proceedings under Acts Nos. 33 and 47 of 1935 represent the first concerted effort which has been made to enforce this important Congressional and Puerto Rican policy. The decision below wholly defeats that effort.

The opinion of the court below, it is true, leaves the way open for the enactment of new legislation in lieu of

Acts Nos. 33 and 47, and perhaps even for the enforcement of Act No. 47 in a differently worded complaint. But the Government of Puerto Rico should not be required uselessly to delay enforcement of this important policy until it can devise both an act and a complaint which will satisfy the court below, which is already of the view that enforcement has been delayed too long to be fairly accomplished now (R. 328).

CONCLUSION

The decision below is incorrect. It strongly tends to thwart enforcement of an important policy adopted for Puerto Rico both by Congress and by the insular legislature. It is therefore respectfully submitted that the petition should be granted.

ROBERT H. JACKSON,
Solicitor General.

JANUARY 1940.

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